

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
SOUTHWESTERN DIVISION**

JACK LYNCH, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 06-5076-CV-SW-FJG
	)	
JOHN D. HOSKINS, et al.,	)	
	)	
Defendants.	)	

**ORDER**

Pending before the Court are (1) plaintiffs' Motion for Leave to File First Amended Petition [sic] and for Withholding of Ruling on Defendants' Motions to Dismiss (Doc. No. 21); (2) defendant Hoskins' Motion to Dismiss (Doc. No. 7); defendant Steward's Motion to Dismiss (Doc. No. 9); and Joint Motion of Defendants John D. Hoskins, Kurt Kysar, Dennis Steward, Terry Daughtrey and Mark Creed for Partial Dismissal (Doc. No. 11). Each motion will be considered below.

**I. Plaintiffs' Motion for Leave to File its First Amended Complaint (Doc. No. 21)**

On September 21, 2006, plaintiffs moved for leave to file their First Amended Complaint because they believe that one or more of defendants' motions to dismiss may be well taken. Therefore, plaintiffs assert that their First Amended Complaint will dismiss certain named defendants and will make other changes appropriate to the case. Notably, plaintiffs did not attached a proposed first amended complaint as an exhibit to their motion. Defendants Hoskins, Kysar, Steward, Daughtrey, and Creed responded to plaintiffs' motion for leave to file first amended complaint, stating they have no objection to plaintiffs' motion.<sup>1</sup>

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<sup>1</sup>Defendants Eustler, Marrs, Young, Barry County, Missouri, and Stone County, Missouri filed no response to the pending motion; however, none of these parties have answered the original complaint, and plaintiffs have filed no returns of service as to these five defendants.

On October 13, 2006, plaintiffs filed their first amended complaint (Doc. No. 23), and on October 16, 2006, defendants Daughtrey and Creed filed answers to the first amended complaint (Doc. Nos. 25 and 26).

Rule 15(a) of the Federal Rules of Civil Procedure provides:

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . . . Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

The Court notes for the parties' future reference that when a party seeks the Court's leave to file an amended complaint, that party must submit a copy of the proposed amendment for the Court's review. See Meehan v. United Consumers Club Franchising Corp., 312 F.3d 909, 913-14 (8<sup>th</sup> Cir. 2002). However, as the defendants have all either (1) indicated their consent to the motion for leave to amend, or (2) not yet been served, the Court will **GRANT** plaintiffs' motion for leave to file their first amended complaint. Plaintiffs' first amended complaint (Doc. No. 23) will be treated as properly filed.

## **II. Defendants' Motions to Dismiss (Doc. Nos. 7, 9, and 11)**

As plaintiffs' Complaint has been replaced by the First Amended Complaint, the Court finds that Defendants' Motion to Dismiss (Doc. Nos. 7, 9, and 11) should be **DENIED AS MOOT.**<sup>2</sup>

**IT IS SO ORDERED.**

/s/ FERNANDO J. GAITAN, JR.  
Fernando J. Gaitan, Jr.  
United States District Judge

Dated: October 18, 2006 .  
Kansas City, Missouri.

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<sup>2</sup>To the extent that the arguments raised in defendants' motions to dismiss the Complaint apply to the First Amended Complaint, defendants may raise those arguments in a motion to dismiss the First Amended Complaint, referring the Court to the arguments made in the previously-filed documents as appropriate.